

JS 44C/SDNY
REV. 1/2008

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Brian Sosa and Rebecca Quinones

DEFENDANTS

The City of New York, The New York City Police Department,
Police Officer Daniel King, Shield No. 23592, and Police
Officer Dawn Mitchiner, Shield No. 6522

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Phillips, Krantz & Associates, LLP, 204 West 84th Street, NY, NY 10024
(212) 580-6500

ATTORNEYS (IF KNOWN)

Michael A. Cardozo, Corporation Counsel, 100 Church Street, New York, New
York 10007
(212) 788-0516

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Violation of Civil Rights, 42 U.S.C. Section 1983, Fourteenth Amendment

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously Assigned _____If yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS		ACTIONS UNDER STATUTES			
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[] 110 INSURANCE	[] 310 AIRPLANE	[] 362 PERSONAL INJURY -	[] 610 AGRICULTURE	[] 422 APPEAL	[] 400 STATE
[] 120 MARINE	[] 315 AIRPLANE PRODUCT	MED MALPRACTICE	[] 620 OTHER FOOD &	28 USC 158	REAPPORTIONMENT
[] 130 MILLER ACT	LIABILITY	[] 365 PERSONAL INJURY	DRUG	[] 423 WITHDRAWAL	[] 410 ANTITRUST
[] 140 NEGOTIABLE	[] 320 ASSAULT, LIBEL &	PRODUCT LIABILITY	[] 625 DRUG RELATED	28 USC 157	[] 430 BANKS & BANKING
INSTRUMENT	SLANDER	[] 368 ASBESTOS PERSONAL	SEIZURE OF		[] 450 COMMERCE
[] 150 RECOVERY OF	[] 330 FEDERAL	INJURY PRODUCT	PROPERTY	PROPERTY RIGHTS	[] 460 DEPORTATION
OVERPAYMENT &	EMPLOYERS'	LIABILITY	21 USC 881		[] 470 RACKETEER INFLU-
ENFORCEMENT	LIABILITY		[] 630 LIQUOR LAWS		ENCED & CORRUPT
OF JUDGMENT	[] 340 MARINE	PERSONAL PROPERTY	[] 640 RR & TRUCK	[] 820 COPYRIGHTS	ORGANIZATION ACT
[] 151 MEDICARE ACT	[] 345 MARINE PRODUCT		[] 650 AIRLINE REGS	[] 830 PATENT	(RICO)
[] 152 RECOVERY OF	LIABILITY	[] 370 OTHER FRAUD	[] 660 OCCUPATIONAL	[] 840 TRADEMARK	[] 480 CONSUMER CREDIT
DEFAULTED	[] 350 MOTOR VEHICLE	[] 371 TRUTH IN LENDING	SAFETY/HEALTH		[] 490 CABLE/SATELLITE TV
STUDENT LOANS	[] 355 MOTOR VEHICLE	[] 380 OTHER PERSONAL	OTHER	SOCIAL SECURITY	[] 810 SELECTIVE SERVICE
(EXCL VETERANS)	PRODUCT LIABILITY	[] 385 PROPERTY DAMAGE			[] 850 SECURITIES/
[] 153 RECOVERY OF	[] 360 OTHER PERSONAL	PRODUCT LIABILITY	LABOR	[] 861 HIA (1395ff)	COMMODITIES/
OVERPAYMENT	INJURY		[] 710 FAIR LABOR	[] 862 BLACK LUNG (923)	EXCHANGE
OF VETERANS'			STANDARDS ACT	[] 863 DIWC/DIWW (405(g))	[] 875 CUSTOMER
BENEFITS	ACTIONS UNDER STATUTES		LABOR/MGMT	[] 864 SSID TITLE XVI	CHALLENGE
[] 160 STOCKHOLDERS	CIVIL RIGHTS	PRISONER PETITIONS	RELATIONS	[] 865 RSI (405(g))	12 USC 3410
SUITS	[] 441 VOTING	[] 510 MOTIONS TO	[] 730 LABOR/MGMT		[] 890 OTHER STATUTORY
[] 190 OTHER	[] 442 EMPLOYMENT	VACATE SENTENCE	REPORTING &	FEDERAL TAX SUITS	ACTIONS
CONTRACT	[] 443 HOUSING/	28 USC 2255	DISCLOSURE ACT	[] 870 TAXES (U.S. Plaintiff or	[] 891 AGRICULTURAL ACTS
PRODUCT	ACCOMMODATIONS	[] 530 HABEAS CORPUS	RAILWAY LABOR ACT	Defendant)	[] 892 ECONOMIC
LIABILITY	[] 444 WELFARE	[] 535 DEATH PENALTY	OTHER LABOR	[] 871 IRS-THIRD PARTY	STABILIZATION ACT
[] 196 FRANCHISE	[] 445 AMERICANS WITH	[] 540 MANDAMUS & OTHER	LITIGATION	26 USC 7609	[] 893 ENVIRONMENTAL
	DISABILITIES -	[] 550 CIVIL RIGHTS	[] 791 EMPL RET INC		MATTERS
REAL PROPERTY	EMPLOYMENT	[] 555 PRISON CONDITION	SECURITY ACT		[] 894 ENERGY
[] 210 LAND	[] 446 AMERICANS WITH		IMMIGRATION		ALLOCATION ACT
CONDEMNATION	DISABILITIES - OTHER		[] 462 NATURALIZATION		FREEDOM OF
FORECLOSURE	✗ 440 OTHER CIVIL RIGHTS		APPLICATION		INFORMATION ACT
[] 220 RENT LEASE &			[] 463 HABEAS CORPUS-		[] 900 APPEAL OF FEE
EJECTMENT			ALIEN DETAINEE		DETERMINATION
[] 240 TORTS TO LAND			OTHER IMMIGRATION		UNDER EQUAL
TORT PRODUCT			ACTIONS		ACCESS TO JUSTICE
LIABILITY					[] 950 CONSTITUTIONALITY
[] 245 ALL OTHER					OF STATE STATUTES
REAL PROPERTY					

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?
IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE Honorable Richard Berman DOCKET NUMBER 08CV4494

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☐ 1 Original Proceeding
 ☒ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court AND at least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

 IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1322, 1441)

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☐ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2 [] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Brian Sosa
 970 Boston Road, Apt. 1P
 Bronx, New York 10456

Rebecca Quinones
 135 West 168th Street
 Bronx, New York 10452

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

THE CITY OF NEW YORK
 100 Church Street
 New York, New York 10007

NEW YORK CITY POLICE DEPARTMENT
 One Police Plaza
 New York, New York 10038

NYC Police Officer Daniel King, Shield No. 23592
 Precinct 42
 830 Washington Avenue
 Bronx, NY 10451
 NYC Police Officer Dawn Mitchiner, Shield No. 6522
 Precinct 42
 830 Washington Avenue
 Bronx, NY 10451

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
 (DO NOT check either box if this a PRISONER PETITION.)

DATE

07/23/08

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

☒ YES (DATE ADMITTED Mo. 04 Yr. 1998)

Attorney Bar Code #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J. Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT

Southern

District of

New York

Brian Sosa and Rebecca Quinones

SUMMONS IN A CIVIL ACTION

V.

The City of New York, the New York City Police
Department, New York City Police Officer Daniel
King, Shield No. 23592, and
New York City Police Officer Dawn
Mitchiner, Shield No. 6522,

CASE NUMBER: 08CV4494 (RMB) (JCF)

TO: (Name and address of Defendant)

1. *The City of New York*
1 Centre Street
New York, NY 10007
2. *New York City Police Department*
1 Police Plaza
New York, NY 10038

3. *New York City Police Officer Daniel King*
Shield No. 23592
Precinct 42
830 Washington Avenue
Bronx, NY 10451
4. *New York City Police Officer Dawn Mitchiner*
Shield No. 6522
Precinct 42, 830 Washington Avenue
Bronx, NY 10451

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Phillips, Krantz & Associates, LLP
204 West 84th Street
New York, New York 10024

an answer to the complaint which is served on you with this summons, within 30 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

Jason G. Krantz, Esq.
(JK-0166)
PHILLIPS, KRANTZ & LEVI, LLP
Attorneys for Plaintiff
204 West 84th Street
New York, New York 10024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BRIAN SOSA and REBECCA QUINONES,

Plaintiffs,

**AMENDED
COMPLAINT**

-against-

JURY TRIAL DEMANDED

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, NEW YORK CITY
POLICE COMMISSIONER, NEW YORK CITY
POLICE OFFICER DANIEL KING, SHIELD NO. 23592,
and POLICE OFFICER DAWN MITCHINER, SHIELD
NO. 6522,

Docket No. 08CV4494 (RMB)
(JCF)

Defendants.

-----X

PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiff, BRIAN SOSA, seeks relief for the defendants' violation of his rights secured by the Civil Rights Acts of 1866 and 1871, 42 U.S.C. Sections 1981 and 1983, and of rights secured by the Fourth Amendment, the Thirteenth Amendment and by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution, and the rights secured under the laws and Constitution of the State of New York. The plaintiff seeks damages, both compensatory and punitive, affirmative and equitable relief, an award of costs and attorneys' fees, and such other and further relief as this court deems equitable and just.

JURISDICTION

2. Jurisdiction is conferred upon this Court by 28 U.S.C. §§1331, 1343 (3) and (4), this being an action seeking redress for the violation of the plaintiff's constitutional and civil rights. The amount of damages in controversy is in excess of Fifty Thousand (\$75,000.00) Dollars, exclusive of interest and costs.

3. Plaintiff's claim for declaratory and injunctive relief is authorized by 28 U.S.C. §§2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

4. The plaintiff further invokes this Court's pendent jurisdiction, pursuant to 28 U.S.C. §1367(a), over any and all state law claims and as against all parties that are so related to claims in this action within the original jurisdiction of this Court that they form part of the same case or controversy.

5. The plaintiff demands a trial by jury on each and every one of the claims as pleaded herein.

VENUE

6. Venue is proper for the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §1391 (a), (b) and (c).

PARTIES

7. At all times herein mentioned, Plaintiff **BRIAN SOSA** was, and still is, a resident of the County of Bronx, State of New York.

8. At all times herein mentioned, Plaintiff **REBECCA QUINONES** was, and still is, a resident of the County of Bronx, State of New York.

9. The cause of action alleged arose in the County of Bronx, City and State of New York.

10. At all times herein mentioned, Plaintiff **BRIAN SOSA** has duly complied with all the conditions precedent to the bringing of this action and in particular, has, on February 6, 2008, and

within the time prescribed by law, duly served upon Defendant, **THE CITY OF NEW YORK**, a Notice of Claim stating, amongst other things, the time when and place where the injuries and damages were sustained, and more than thirty (30) days have elapsed since the presentation of said notice of claim, and such claim remains unadjusted and unpaid, and thereafter, and within the time provided by law, this action was commenced.

11. That on March 26, 2008, a hearing pursuant to General Municipal Law 50-H was held.

12. Defendant **THE CITY OF NEW YORK** is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant **THE CITY OF NEW YORK** assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risk attaches to the public consumers of the services provided by **THE NEW YORK CITY POLICE DEPARTMENT**.

13. Defendant **THE NEW YORK CITY POLICE DEPARTMENT** is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to carry out all police functions for the Defendant **THE CITY OF NEW YORK** and assumes the risks incidental to the maintenance of its police force and the employment of police officers.

14. Defendant **POLICE OFFICER DANIEL KING, SHIELD NO. 23592** is and was at all times relevant herein an officer, employee and agent of **THE NEW YORK CITY POLICE DEPARTMENT**, a municipal agency of Defendant **THE CITY OF NEW YORK**. Defendant **DANIEL KING** is sued individually and in his official capacities.

15. Defendant **POLICE OFFICER DAWN MITCHINER, SHIELD NO. 6522** is and

was at all times relevant herein an officer, employee and agent of **THE NEW YORK CITY POLICE DEPARTMENT**, a municipal agency of Defendant **THE CITY OF NEW YORK**. Defendant **DAWN MITCHINER** is sued individually and in her official capacities.

16. At all times relevant herein, the individual defendants herein were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of **THE NEW YORK CITY POLICE DEPARTMENT** and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of **THE CITY OF NEW YORK** and **THE NEW YORK CITY POLICE DEPARTMENT** at all times relevant herein with the power and authority vested in them as officers, agents and employees of **THE NEW YORK CITY POLICE DEPARTMENT** and incidental to the lawful pursuit of their duties as officers, employees and agents of **THE NEW YORK CITY POLICE DEPARTMENT**.

STATEMENT OF FACTS

17. That on or about February 1, 2008, Plaintiff **BRIAN SOSA** was lawfully operating a motor vehicle at or about 169th Street at or near its intersection with Franklin Avenue, in the County of Bronx, State of New York, and adjacent to 1299 Franklin Avenue, Bronx, New York.

18. That at said time and place, Defendant **POLICE OFFICER DANIEL KING, SHIELD NO. 23592**, without a warrant, cause or provocation did stop, seize, detain, arrest and imprison the Plaintiff **BRIAN SOSA**.

19. That at said time and place, Defendant **POLICE OFFICER DANIEL KING**, without a warrant, cause or provocation did assault the plaintiff **BRIAN SOSA** by using unnecessary and/or excessive force on the plaintiff including but not limited to, shooting the plaintiff.

20. That Defendant **POLICE OFFICER DANIEL KING** initiated and participated in the

malicious prosecution of the Plaintiff **BRIAN SOSA**.

21. That at said time and place, Defendant **POLICE OFFICER DAWN MITCHINER**, **SHIELD NO, 6522**, without a warrant, cause or provocation did stop, seize, detain, arrest and imprison the Plaintiff **BRIAN SOSA**.

22. That at said time and place, Defendant **POLICE OFFICER DAWN MITCHINER**, without a warrant, cause or provocation did assault the plaintiff **BRIAN SOSA** by using unnecessary and/or excessive force on the plaintiff including but not limited to, shooting the Plaintiff.

23. That Defendant **POLICE OFFICER DAWN MITCHINER** initiated and participated in the malicious prosecution of the Plaintiff **BRIAN SOSA**.

24. That although Plaintiff was shot and handcuffed, no criminal charges were brought against Plaintiff **BRIAN SOSA**.

25. That as a result of the aforementioned occurrence, Plaintiff **BRIAN SOSA** was caused to sustain severe physical injury, mental and/or emotional distress, mental anguish, shock, emotional disturbance and psychic trauma and plaintiff had to extend money for medical care and legal expenses as well as damage and injury to his reputation, character and earning power.

26. On or about February 27, 2008, the Plaintiff initiated a complaint against the rogue New York City police officers at the Civilian Complaint Review Board ("CCRB"). Upon information and belief, the matter was assigned a case number 2008-02910, and both the CCRB and the Internal Affairs Bureau of the New York City Police Department are currently investigating same.

27. To date, the Plaintiff has never been advised of the findings of the CCRB investigation or of the Internal Affairs Bureau investigation.

28. The conduct of the defendants in assaulting the plaintiff, in shooting the plaintiff, in

depriving him of his state and federal rights, and in failing to adequately investigate the plaintiff's allegations of criminal misconduct on the part of the defendant police officers, proximately caused the plaintiff serious and permanent physical and emotional injury, pain and suffering, mental anguish, humiliation and embarrassment.

FIRST CLAIM

(Violation of Rights Secured by 42 U.S.C. §1983 and the Fourteenth Amendment to the United States Constitution for Seizing, Detaining, Arresting, Imprisoning, Prosecuting and Assaulting the Plaintiff)

29. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 28 as if fully set forth herein.

30. The conduct and actions of Defendants **POLICE OFFICER DANIEL KING, POLICE OFFICER DAWN MITCHINER** and other unidentified Police Officers, acting under color of law, in falsely seizing, detaining, arresting and assaulting the plaintiff, and in prosecuting the plaintiff was done intentionally, maliciously and/or with a reckless disregard for the natural and probable consequences of their acts, was done without lawful justification, and was designed to and did cause specific and serious bodily, mental and emotional harm, pain and suffering in violation of the plaintiff's Constitutional Rights as guaranteed under 42 U.S.C. §1983, and the Fourteenth Amendment to the United States Constitution.

SECOND CAUSE OF ACTION

Violation of Rights Secured by 42 U.S.C. §1983 and the Fourteenth Amendment to the United States Constitution by Failing to Protect the Plaintiff from Unconstitutional Harm

31. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 30 as if fully set forth herein.

32. The conduct and actions of Defendant **POLICE OFFICER DANIEL KING** and Defendant **POLICE OFFICER DAWN MITCHINER**, and other unidentified Police Officers, acting under color of law, in failing to take any steps to protect the plaintiff from the unjustified and unconstitutional treatment he was receiving at the hands of the police officer defendants, was done intentionally, maliciously, and/or with a reckless disregard for the natural and probable consequences of their acts, was done without lawful justification, and was designed to and did cause specific and serious bodily, mental and emotional harm, pain and suffering in violation of the plaintiff's Constitutional rights as guaranteed under 42 U.S.C. §1983, and the Fourteenth Amendment to the United States Constitution.

33. That as a result of the aforementioned occurrence, Plaintiff **BRIAN SOSA** was caused to sustain severe physical injury, mental and/or emotional distress, mental anguish, shock, emotional disturbance and psychic trauma and plaintiff had to extend money for medical care and legal expenses as well as damage and injury to his reputation, character and earning power.

THIRD CAUSE OF ACTION

(Monell Claim Against the Municipal Defendants)

34. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 33 as if fully set forth herein.

35. At all times material to this complaint, the Defendant, **CITY OF NEW YORK**, acting through its Police department and its Police Commissioner, had in effect de facto policies, practices, and customs that were a direct and proximate cause of the unconstitutional conduct of Defendant **POLICE OFFICER DANIEL KING** and other unidentified Police Officers, and of the resultant official coverup of the wrong and unconstitutional conduct of these officers.

36. These de facto policies, practices and customs include, inter alia: (a) the negligent

failure to properly and effectively screen, hire, train, supervise, discipline, retain, transfer, counsel, and/or otherwise control police officers engaged in the excessive and unjustified use of force, particularly those police officers who are repeatedly accused of such acts: and (b) the police code of silence wherein police officers regularly coverup police use of excessive and unjustified force by telling false and incomplete stories, or by failing to report the use of excessive and unjustified force by police officers, inter alia, in sworn testimony, official reports, in statements to the Civilian Complaint Review Board ("CCRB") and the Internal Affairs Bureau, and in public statements, all of which are designed to cover for and/or falsely exonerate the accused police officers.

37. On information and belief, the Defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT**, negligently failed to properly and effectively screen, hire, train, supervise, discipline, retain, transfer, counsel, and/or otherwise control their police officers, including the defendant police officers herein, for their propensity for violence, including excessive and unjustified force and restraint, lack of truthfulness, and for their failure to protect citizens from unconstitutional conduct of other police officers, thereby permitting and allowing the defendant police officers herein to be in a position to assault and/or excessively and unjustifiably restrain the plaintiff and to otherwise cause him injury and violate his federal and state constitutional rights, and/or permit these actions to take place with their knowledge or consent.

38. On information and belief, the defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT**, negligently retained Defendant **POLICE OFFICER DANIEL KING** and other unidentified police officers.

39. On information and belief, the defendant police offices herein have been the subject of prior civilian and departmental complaints of misconduct that gave notice to, or would have given notice to, the defendants that the defendant police officers herein were likely to engage in conduct

that would violate the civil and constitutional rights of the public, such as the conduct complained of by the plaintiff herein.

40. On information and belief, the defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT** maintained an inadequate structure for risk containment and stress management relative to its police officers, and failed to create proper means of containing such risk and managing such stress. Inter alia, the structure was deficient, at the time of selection of police officers and thereafter during their employment, in its ability to evaluate and exchange information within the command structure about the performance of individual police officers; in its training of supervisory personnel to effectively and adequately evaluate the performance of an officer; and in its ability to otherwise put the command structure on notice that an individual or individuals were at significant levels of risk to the public at large or to specific segments thereof. The effect of this was to permit police officers of the department to function at levels of significant and substantial risk to the public in general and to the particular.

41. As a result of the foregoing conscious policies, practices, customs and/or usages, defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT** have permitted and allowed the employment and retention of individuals as police officers whose individual circumstances place the public or segments thereof at substantial risk of being the victims of violent or racially motivated behavior. Such policies, practices, customs and/or usages are a direct and proximate cause of the conduct alleged herein and otherwise a direct and proximate cause of the injuries to the plaintiff herein.

42. As a direct and proximate result of the defendants' wrongful policies, practices, customs and/or usages complained of herein, the plaintiff has suffered physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment, both

personally and professionally.

FOURTH CAUSE OF ACTION

(Monell Claim Against the Municipal Defendants)

43. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 42 as if fully set forth herein.

44. At all times material to this complaint, the Defendant **CITY OF NEW YORK**, acting through its Police department and its Police Commissioner, had in effect de facto policies, practices, and customs that were a direct and proximate cause of the unconstitutional conduct of Defendant **POLICE OFFICER DAWN MITCHINER** and other unidentified Police Officers, and of the resultant official coverup of the wrong and unconstitutional conduct of these officers.

45. These de facto policies, practices and customs include, inter alia: (a) the negligent failure to properly and effectively screen, hire, train, supervise, discipline, retain, transfer, counsel, and/or otherwise control police officers engaged in the excessive and unjustified use of force, particularly those police officers who are repeatedly accused of such acts; and (b) the police code of silence wherein police officers regularly coverup police use of excessive and unjustified force by telling false and incomplete stories, or by failing to report the use of excessive and unjustified force by police officers, inter alia, in sworn testimony, official reports, in statements to the Civilian Complaint Review Board ("CCRB") and the Internal Affairs Bureau, and in public statements, all of which are designed to cover for and/or falsely exonerate the accused police officers.

46. On information and belief, the Defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT**, negligently failed to properly and effectively screen, hire, train, supervise, discipline, retain, transfer, counsel, and/or otherwise control their police officers, including the defendant police officers herein, for their propensity for violence, including

excessive and unjustified force and restraint, lack of truthfulness, and for their failure to protect citizens from unconstitutional conduct of other police officers, thereby permitting and allowing the defendant police officers herein to be in a position to assault and/or excessively and unjustifiably restrain the plaintiff and to otherwise cause him injury and violate his federal and state constitutional rights, and/or permit these actions to take place with their knowledge or consent.

47. On information and belief, the defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT**, negligently retained Defendant **POLICE OFFICER DAWN MITCHINER** and other unidentified police officers.

48. On information and belief, the defendant police offices herein have been the subject of prior civilian and departmental complaints of misconduct that gave notice to, or would have given notice to, the defendants that the defendant police officers herein were likely to engage in conduct that would violate the civil and constitutional rights of the public, such as the conduct complained of by the plaintiff herein.

49. On information and belief, the defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT** maintained an inadequate structure for risk containment and stress management relative to its police officers, and failed to create proper means of containing such risk and managing such stress. Inter alia, the structure was deficient, at the time of selection of police officers and thereafter during their employment, in its ability to evaluate and exchange information within the command structure about the performance of individual police officers; in its training of supervisory personnel to effectively and adequately evaluate the performance of an officer; and in its ability to otherwise put the command structure on notice that an individual or individuals were at significant levels of risk to the public at large or to specific segments thereof. The effect of this was to permit police officers of the department to function at levels of significant

and substantial risk to the public in general and to the particular.

50. As a result of the foregoing conscious policies, practices, customs and/or usages, defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT** have permitted and allowed the employment and retention of individuals as police officers whose individual circumstances place the public or segments thereof at substantial risk of being the victims of violent or racially motivated behavior. Such policies, practices, customs and/or usages are a direct and proximate cause of the conduct alleged herein and otherwise a direct and proximate cause of the injuries to the plaintiff herein.

51. As a direct and proximate result of the defendants' wrongful policies, practices, customs and/or usages complained of herein, the plaintiff has suffered physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment, both personally and professionally.

FIFTH CAUSE OF ACTION

Violation of Rights Under State Law

52. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 51 as if fully set forth herein.

53. By the actions described above, each and all of the defendants jointly and severally, have committed the following wrongful acts against the plaintiff, which are tortuous under the laws of the State of New York:

- a. assault and battery of the plaintiff,
- b. trespass on the person of the plaintiff,
- c. false arrest and imprisonment of the plaintiff,
- d. negligence in causing injuries to the plaintiff,

e. malicious prosecution

f. abuse of power

g. intentional infliction of emotional distress upon the plaintiff, in that the defendants intended to and did cause the plaintiff severe emotional distress, and the defendants' acts were outrageous in the extreme and utterly unacceptable in a civilized society;

h. negligent hiring, screening, retention, supervision and training of defendant police officers by Defendant **THE CITY OF NEW YORK** and Defendant **THE NEW YORK CITY POLICE DEPARTMENT**;

i. conspiracy by the defendants to commit all of the above acts;

j. violation of rights otherwise guaranteed to the plaintiff under the laws and Constitution of the State of New York.

54. The foregoing acts and conduct of the defendants were the direct and proximate cause of injury and damage to the plaintiff and violated his statutory and common law rights as guaranteed him by the laws and Constitution of the State of New York.

55. That as a result of the aforementioned occurrence, Plaintiff **BRIAN SOSA** was caused to sustain severe physical injury, mental and/or emotional distress, mental anguish, shock, emotional disturbance and psychic trauma and plaintiff had to extend money for medical care and legal expenses as well as damage and injury to his reputation, character and earning power.

56. That this action falls within one or more of the exceptions as set forth in CPLR §1602.

57. By reason of the foregoing, Plaintiff **BRIAN SOSA** has been damaged in a sum exceeding the jurisdictional limits of all lower courts.

SIXTH CAUSE OF ACTION

Respondeat Superior Claim Under State Law

58. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 57 as if fully set forth herein.

59. The conduct of Defendant **POLICE OFFICER DANIEL KING** and Defendant **POLICE OFFICER DAWN MITCHINER**, and other unidentified Police Officers alleged herein, occurred while they were on duty and acting in and during the course and scope of their duties and functions as New York City police officers, and while they were acting as agents and employees of the Defendant **THE CITY OF NEW YORK** and Defendant **THE NEW YORK CITY POLICE DEPARTMENT**, and as a result the defendant **THE CITY OF NEW YORK** and **THE NEW YORK CITY POLICE DEPARTMENT** are liable to the Plaintiff pursuant to the state common law doctrine of respondeat superior.

**AS AND FOR A SEVENTH CAUSE OF ACTION ON BEHALF OF
PLAINTIFF REBECCA QUINONES**

60. Plaintiff **REBECCA QUINONES** repeats, reiterates, and realleges each and every paragraph numbered 1 through 59 above with the same force and effect as though fully set forth herein.

61. That on February 1, 2008, the Plaintiff's 2003 Saturn motor vehicle bearing New York State registration number DUA8960, while operated by the Plaintiff **BRIAN SOSA**, was wrongfully and negligently shot, touched, battered, smashed and reduced in value without justification or cause, at or about 1299 Franklin Avenue, also known as Franklin Avenue at or near its intersection with 169th Street, Bronx, New York without authorization, by Defendants, **POLICE OFFICER DANIEL KING** and **POLICE OFFICER DAWN MITCHINER** and other New York City Police

Department officers, whose names are presently unknown to claimant, while acting in the scope of their employment and in furtherance of defendants **THE CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT**'s business.

62. That as a result of the aforesaid contact, the 2003 Saturn motor vehicle owned by Plaintiff **REBECCA QUINONES** was severely damaged.

63. That as a result of the negligence of the Defendants herein, Plaintiff **REBECCA QUINONES** has been deprived of the use of his motor vehicle.

64. That by reason of the foregoing, plaintiff **REBECCA QUINONES** has suffered property damages in the sum of **TWENTY FIVE THOUSAND and 00/100 (\$25,000.00) DOLLARS**.

WHEREFORE, the Plaintiffs demand the following relief jointly and severally against all of the defendants:

- a. Compensatory damages for Plaintiff in the amount of \$100,000,000.00;
- b. Punitive damages for the plaintiff in the amount of \$100,000,000.00;
- c. Property damages for the Plaintiff, **REBECCA QUINONES**, in the amount of \$25,000.00;
- c. The convening and empaneling of a jury to consider the merits of the claims herein;
- d. A court order, pursuant to 42 U.S.C. §1988, that the plaintiff is entitled to the costs involved in maintaining this action and attorneys' fees;

- e. Such other and further relief as this court may deem appropriate and equitable, including injunctive and declaratory relief as may be required in the interests of justice.

DATED: New York, New York
June 10, 2008

By: _____

Jason G. Krantz, Esq.
(JK-0166)
PHILLIPS, KRANTZ & LEVI, LLP
Attorneys for Plaintiff
204 West 84th Street
New York, New York 10024
(212) 580-6500

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIAN SOSA and REBECCA QUINONES,

Plaintiffs,

-against-

Docket No. 08CV4494 (RMB) (JCF)

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT, NEW YORK CITY POLICE
OFFICER DANIEL KING, SHIELD NO. 23592, and
NEW YORK CITY POLICE OFFICER DAWN
MITCHNER, SHIELD NO. 6522,

Defendants.

-----X

SUMMONS AND AMENDED COMPLAINT

PHILLIPS, KRANTZ & LEVI, LLP

Attorneys for Plaintiffs
Brian Sosa and Rebecca Quinones
204 West 84th Street
New York, NY 10024
(212)580-6500

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: _____

Signature: _____
Print Signer's Name: _____

PLEASE TAKE NOTICE

☐ that the within is a (certified) true copy of a
Notice entered in the office of the clerk of the within named Court on
of Entry

☐ that an Order of which the within is a true Copy will be presented for settlement
Notice to the Hon. one of the Judges of the within named Court, at of
Settlement on 20

Dated: _____